

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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GARY LA BARBERA, et al.,

Plaintiff(s),

MEMORANDUM
OPINION & ORDER

-against-

CV 04-4534 (ADS) (ETB)

TECTONIC ENGINEERING & SURVEYING
CONSULTANTS, P.C.,

Defendant(s).

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In a two-page letter motion, plaintiffs' counsel seeks the following relief: a second clarification of an order, dated July 6, 2005; defendant's compliance with its discovery obligations; defendant's refusal to be deposed; a stay of discovery pending the outcome of a request for partial summary judgment (notwithstanding the court's order, dated September 7, 2005, that summary judgment be sought from Judge Spatt "upon completion of discovery." (Order dated September 7, 2005).

By unauthorized reply, plaintiffs' counsel additionally seeks a further extension of discovery (notwithstanding the order, dated July 6, 2005, extending discovery to November 19, 2005 and further stating that "[T]here will be no further extensions for good cause. See order dated November 22, 2005 at 2, no. 4."

The plaintiffs' requests for such relief are denied. First, plaintiffs fail to set forth in their terse letter request facts that would entitle plaintiffs to any of the relief requested.

The application to compel document production is denied, based on production of the requested documents. See opposing correspondence, dated September 23, 2005, by Christopher J.

Murphy. Although plaintiffs have filed a reply, they do not dispute defendant's production of these documents at its place of business. See Rule 34(b), Fed. R. Civ. P., ("[a] party who produces documents for inspection shall produce them as they are kept in the ordinary course of business. . . ."). Accordingly, this request is denied. Lastly, since plaintiffs now argue with defendant that "the Orders are clear," see plaintiffs' reply¹ correspondence, dated September 23, 2005, the second request for clarification is deemed withdrawn as moot.

Lastly, this motion is patently devoid of merit. There has been no request for costs and counsel fees by the defendant, and the court is reluctant to sua sponte raise the issue since it will undoubtedly serve to only spawn further litigation. The plaintiffs and their counsel are placed on notice that any similar meritless motions will be addressed either through sanctions under Rule 37 or under 28 U.S.C. § 1927.

SO ORDERED:

Dated: Central Islip, New York
September 28, 2005

/s/ E. Thomas Boyle
E. THOMAS BOYLE
United States Magistrate Judge

¹ This was submitted contrary to the court's individual rules concerning discovery related motions, pursuant to Local Civil Rule 37.3(c), and otherwise without leave to depart from the rules. The court has, therefore, also considered the defendant's sur-reply, dated September 26, 2005, in this motion.